

SENATE BILL 2094
By Henry

AN ACT regarding an enhancement program for debt financing by local government units for local education agency capital projects, and to amend Tennessee Code Annotated, Titles 4, 9 and 49

WHEREAS, the State of Tennessee has previously determined that financing costs incurred by local government units in connection with primary and secondary education capital projects are a significant factor in meeting the education needs of their communities; and

WHEREAS, to the extent that a program can be structured to expand the market for and reduce the interest cost incurred by local government units in financing education capital projects, local governments will be more able to meet the education needs of their communities with such savings; now, therefore,

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 4, Chapter 31, is amended by adding the following sections as a new part:

Section 4-31-11__.

(a) For the purposes of this Part, the following definitions shall apply:

(1) "authority", "construction", and "education project" as defined in Section 4-31-1003;

(2) "available local capital outlay funds" means, with respect to any LGU or LEA, the state share of the capital outlay portion of the non-classroom component of the BEP funding as set forth in the formula model established or revised by the state board of education, or any replacement funding, approved by the general assembly from time to time, which the LGU or LEA is entitled to receive;

- (3) “basic education program” (or “BEP”) and “local education agency” (or “LEA”) as defined in section 49-3-302;
- (4) “education debt” means debt issued (together with any debt issued to renew or refund such debt) by any local government unit to finance the construction of education projects subject to an agreement entered into pursuant to this part;
- (5) “enhancement program” means the program established pursuant to this part;
- and
- (6) “local government unit” (or “LGU”) as defined in section 4-31-102.
- (b) Only local government units funding the local share of the basic education program for a local education agency shall be eligible to participate in the program under this part.
- (c) The authority, in conjunction with the department of education, is empowered and is authorized to develop an enhancement program under which legally available state funds and available local capital outlay funds assigned or pledged by the LGU or LEA may be applied to one or more of the following purposes for education debt issued by LGU's: to pay the debt service on or to provide for the payment of debt service on such debt, or to provide reserves for such debt.
- (d) The department of education, in conjunction with the authority, shall develop an application and review procedure for requests under this enhancement program. The department of education shall review each proposed education project and shall make recommendations to the authority as to the applications. The department shall monitor education projects during the term of the agreements required by Section 4-31-11__.
- Section 4-31-11__.

Any program established by the authority pursuant to this part may include such provisions as may be agreed upon by the parties and shall additionally include among other things, in substance, the following:

- (a) The structural requirements of the education debt issued by the local government unit, including payment dates, maturity schedule, interest rates, and paying agent.
- (b) The coverage requirement for the available local capital outlay funds (provided that the maximum annual debt service on the education debt can be no greater than the available local capital outlay funds in the prior fiscal year divided by 1.25).
- (c) A description and estimated costs of the education project.
- (d) An agreement by the local government unit and the LEA to:
 - (1) proceed expeditiously with, and use its best efforts to complete, the education project;
 - (2) commence operation of the education project as soon as possible after completion, and not to use the education project for any purpose not approved pursuant to this part, and not to discontinue operations or dispose of the education project without the prior approval of the authority and the department of education;
 - (3) operate and maintain the project in accordance with applicable provisions of this part and rules and regulations of the department of education;
 - (4) assign or pledge available local capital outlay funds; and
 - (5) cause to be made an annual audit of the financial records of the LEA each fiscal year in accordance with generally accepted government auditing standards, and to furnish a copy of each such audit to the comptroller of the treasury.

Section 4-31-11__.

- (a) Each local government unit issuing education debt, as well as any local education agency for which such education debt is issued, are authorized to assign or pledge for the further security of the education debt the available local capital outlay funds, whether such debt is issued pursuant to Title 9, Chapter 21, or Title 49, Chapter 3, and to assign or pledge to the authority all right and interest in such funds to be used by the authority as permitted under this part.
- (b) Upon the approval of an application, the authority shall notify the commissioner of finance and administration, indicating the identity of the participating LGU and LEA and the terms of the assignment or pledge. The authority shall submit a certified copy of the debt service schedule for the education debt to the commissioner of finance and administration. The commissioner of finance and administration shall be entitled to rely on such schedule or other submitted documentation, without any further review or investigation. Notwithstanding Section 49-3-101(b), the Commissioner shall withhold and pay such sum from the available local capital outlay funds to the authority pursuant to any assignment or pledge.
- (c) Any earnings on such funds after receipt by the authority and prior to payment on the education debt shall accrue to the benefit of the authority.
- (d) The lien of any assignment or pledge pursuant to this part shall be valid and binding as of the time it is made, and as against all parties having claims of any kind in tort, contract, or otherwise against the local government unit, the local education agency, or the authority, irrespective of whether such parties have notice of those claims. Recording of the resolution or any other instrument by which the assignment or pledge is created is not required. This part and the agreement required by Section 4-31-11__ shall in all respects govern the creation, perfection, priority and

enforcement of such assignment or pledge and Title 47, Chapter 9, Tennessee Code Annotated, shall not govern such matters.

SECTION 2. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 3. This act shall take effect on July 1, 2005, the public welfare requiring it.